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Federal Communication Commission
Bureau / Office

TO:

**Mr. Jared Carlsen, Deputy Division Chief
Federal Communications Commission
Wireless Telecommunications Bureau
Policy Division
445 12th Street, S.W.
Washington, D.C. 20554**

VIA HAND DELIVERY

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November 22, 2002

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

*Re: Kodiak Wireless, LLC
Call Sign: WPOL234
Alaska 2 – Bethel RSA (A2)
Petition for Limited Waiver and Extension of Time*

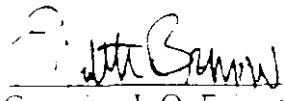
Dear Ms. Dortch:

On behalf of Kodiak Wireless, LLC ("Kodiak"), pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, we hereby submit this request for limited waiver and extension of time to implement the capability to support the nationwide roaming of customers with ported and pooled numbers. Kodiak is the cellular licensee of Station WPOL234 in the **A2** portion of the Alaska 2 - Bethel RSA.

Please contact the undersigned counsel with any questions you may have at (202) 783-4141.

Sincerely,

Wilkinson Barker Knauer, LLP

By: 
Georgina L.O. Feigen
Elizabeth Braman

Enclosure

cc: Barry Ohlson, Division Chief, Wireless Telecommunications Bureau, Policy Division
Jared Carlson, Deputy Division Chief, Wireless Telecommunications Bureau, Policy Division

Before the
Federal Communications Commission
Washington, DC

In the matter *of*)
)
Numbering Resource Optimization)
)
)

To Wireless Telecommunications Bureau, Policy Division

**PETITION FOR LIMITED WAIVER
AND EXTENSION OF TIME**

Kodiak Wireless, LLC ("Kodiak"), pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, hereby requests a limited waiver of Section 52.31(a)(2) of the Commission's rules, **47 C.F.R. § 52.31(a)(2)**, requiring carriers to be able to support the nationwide roaming of customers with ported and pooled numbers by November **24**, 2002.'

I. Background

Kodiak is the cellular licensee of Station WPOL234 operating on the A2 portion of the **Alaska 2** – Bethel RSA. Kodiak is an extremely small carrier that operates two cell sites and one switch providing coverage to portions of Kodiak Island, Alaska. Its customer base is comprised of approximately 1600 subscribers from a local military base, a missile installation, fishing villages and tourists who frequent Kodiak Island.

¹ While Section 52.31(a)(2) requires that "all covered CMRS providers must be able to support roaming nationwide" of ported numbers by November 24, 2002, the Commission's recent decision in *Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, provided that all CMRS carriers must also "support roaming nationwide for customers with *pooled* numbers by November 24, 2002." *Memorandum Opinion and Order*, 17 FCC Red 14972, 14986 (rel. July 26, 2002) ("MO&O" (emphasis added)).

II. A Limited Waiver is Necessary and Warranted

A. Despite its Efforts, Kodiak Cannot Support Roaming by November 24, 2002

As a small rural cellular provider, Kodiak is working diligently to ensure its ability to support end users with pooled or ported numbers roaming through its network. However, like other small carriers, successful completion of the technical requirements needed to support the roaming of pooled and ported numbers continues to present a major obstacle as it requires upgrades to Kodiak's switch in order to be capable of recognizing the separation of the mobile identification number ("MIN") and the mobile directory number ("MDN").² Kodiak will not be able to meet the FCC's November 24th deadline, however as discussed below, Kodiak will be able to support roaming in the near future. Thus, Kodiak requests a limited waiver of Section 52.31(a)(2) of the Commission's rules.³

A waiver of the Commission's rules is generally granted for "good cause" shown, if "in view of unique or unusual factual circumstances of the instant case, application of

² It is Kodiak's belief that recognition of the MIN-MDN separation is a pre-requisite for a carrier to be able to support a call roaming over its network with a number that has been pooled or ported, and that phones in service prior to November 24, 2002 will be grandfathered to have a matching MIN-MDN combination. In all likelihood there will be few, if any, affected roamers passing through Kodiak's system during the limited time period covered by the instant waiver request. Indeed, only a subset of subscribers of other wireless carriers who begin service after November 24, 2002, and who receive a different MIN-MDN combination, should be affected.

³ Kodiak does not believe that any other LNP-related waivers are necessary. It is Kodiak's understanding that while the "extension of LNP mandates does not alter CMRS carriers' obligation to participate in thousands-block number pooling by November 24, 2002," as a carrier outside the top 100 MSAs, Kodiak did not have a previous obligation to participate in thousands-block number pooling, and thus continues to not have such an obligation now. *MO&O*, 17 FCC Red. at 14986. The Commission even notes that there are "those operating in markets where pooling will not initially be implemented, by November 24, 2002." *MO&O*, 17 FCC Red. at 14982. Should, however, the Commission determine that carriers outside the top 100 MSAs are obligated to be able to participate in thousands-block number pooling by November 24, 2002, Kodiak asks that this instant petition also serve as a request to waive Section 52.20(b) for the above stated reasons. In addition, if the Commission considers that any non-LNP waivers are necessary, Kodiak hereby requests the waiver of any such rule or policy.

the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”

Small rural carriers, such as Kodiak, are uniquely affected by the Commission’s local number portability (“LNP”) and thousands-block number pooling and roaming obligations. **As** a small carrier, Kodiak has limited resources in terms of time, money and manpower with which to simultaneously maintain reliable service while expanding its system’s capacity and coverage area. Kodiak’s resources are depleted further as it works to comply with the Commission’s important public policy initiatives, including Communication for Law Enforcement Act (“CALEA”), Text Telephone Devices (“TTY”) and Enhanced 911 (“E-911”). While remaining committed to these projects, in today’s economy Kodiak’s monetary as well as non-monetary resources are being stretched thin by the need to maintain reliable service, to increase its system’s capacity and to comply with the Commission’s mandates. Given the limited resources currently available to Kodiak, requiring Kodiak to comply with the Commission’s roaming requirements for customers with ported and pooled numbers by November 24 would be inequitable and unduly burdensome.

Recently, the Commission recognized that small carriers such as Kodiak face unique challenges and disproportionate burdens when they attempt to comply with Commission public policy initiatives. In the *E-911 Stay Order* which was released this summer, the Commission noted that small carriers often must contend with “temporary

⁴ 47 C.F.R. §§ 1.3, 1.925; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1169 (D.C. Cir. 1990); *WAT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) cert. denied, 409 U.S. 1027 (1972).

and special circumstances” not faced by larger carriers.⁷ In recognition of these special circumstances and burdens, the Commission denominated small carriers such as Kodiak, “Tier III carriers,” and delayed the E-911 deadline furthest for Tier III carriers.⁸ Kodiak respectfully submits that it is appropriate for the Commission to extend the roaming deadline for small carriers, just as it extended deadlines for small carriers in the E-911 context.

B. Kodiak Requests a Short, Finite Extension

Due to the efforts Kodiak has expended to date, it can assure the Commission that a short and finite extension of time is all that is required. Kodiak anticipates that it will only need till the end of the second quarter in 2003 to complete the switch upgrades which will give Kodiak the capability to support roaming, test the new upgrades on-line, and work with other carriers to assure that MIN/MDN separation works as intended. Thus, by the end of June 2003, Kodiak expects to meet the roaming requirements of Section 52.31(a)(2) of the Commission's rules. Kodiak will work diligently to become roaming compliant before the end of the extension period, if possible.

For the foregoing reasons, Kodiak requests a temporary waiver of Section 52.31(a)(2) of the Rules and an extension of time until the end of the second quarter of 2003 to complete its installation of the necessary upgrades to its switch in order to

⁷ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Show Cause, 17 FCC Red 14841, 14844 (rel. July 26, 2002) (“*E-911 Stay Order*”).

⁸ The FCC defined Tier III carriers as those non-nationwide carriers that have less than 500,000 subscribers. *Id.* at 14847.

support nationwide roaming. Kodiak respectfully suggests that the grant of the waiver and the limited extension would be in the public interest

Respectfully submitted,

Kodiak Wireless, LLC

By: Jeff Derrickson EB
Jeff Derrickson
General Manager
Kodiak Wireless, LLC

November 22, 2002